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Guy M. Hicks  
General Counsel

May 5, 2000

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

RECEIVED  
Tennessee Regulatory Authority  
MAY 5 PM 3 26  
COMMUNICATIONS SECTION

Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*  
Docket No. 99-00430

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Final Best Offers. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

  
Guy M. Hicks

GMH:ch  
Enclosure

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5800

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

**IN RE:**        *Petition by ITC^DeltaCom Communications, Inc. for Arbitration of Certain Unresolved Issues in Interconnection Agreement Negotiations Between ITC^DeltaCom and BellSouth Telecommunications, Inc.*

**Docket No. 99-00430**

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**FINAL BEST OFFERS**

**I. INTRODUCTION**

Pursuant to the rulings on April 4, 2000 of the Tennessee Regulatory Authority ("Authority"), acting as Arbitrators, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits and requests approval of its Final Best Offers to ITC^DeltaCom Communications, Inc. ("DeltaCom") on Issues 4(a), 5, and 8(e). BellSouth's Final Best Offers include the specific contract language proposed by BellSouth and a brief statement as to BellSouth's rationale for proposing such language.<sup>1</sup>

**II. DISCUSSION**

**A.     Should BellSouth Provide Cageless Collocation to ITC^DeltaCom 30 Days After A Complete Application Is Filed? – Issue 4(a).**

**1.     BellSouth's proposed language**

- 6.4.1 Subject to Section 6.4.2 and excluding the time interval required to secure the appropriate government licenses or permits, if any, BellSouth will complete construction for collocation arrangements for DeltaCom as soon as possible, but not later than: (i) 90 business days from receipt of a complete and accurate Bona Fide Firm Order under ordinary circumstances; or (ii) 130 business days from receipt of a complete and accurate Bona Fide Firm Order under extraordinary circumstances.

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<sup>1</sup> The parties also were directed to file Final Best Offers with respect to Issue 1(a), concerning performance measures and remedies. However, the Arbitrators gave the parties forty-five (45) days from the date of the issuance of the transcript within which to file Final Best Offers on this issue, which, by BellSouth's calculation, is May 19, 2000.

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- 6.4.1.1 “Ordinary circumstances” refer to situations when collocation space is available and only limited infrastructure space preparation work is required, including, but not limited to, minor changes to HVAC, cable racking, or power plant(s).
- 6.4.1.2 “Extraordinary circumstances” refer to situations not generally encountered in completing a collocation arrangement, and include, but are not limited to, major BellSouth equipment rearrangement or addition; power plant addition or upgrade; major mechanical addition or upgrade; major upgrade for ADA compliance; environmental hazard or hazardous materials abatement; and arrangements for which equipment shipping intervals are extraordinary in length.
- 6.4.2 BellSouth will complete construction for cageless physical collocation arrangements for DeltaCom not later than 30 business days from receipt of a complete and accurate Bona Fide Firm Order, if the following conditions exist: (i) partially conditioned space is available in BellSouth’s central office with no infrastructure space preparation work required (e.g., no changes to HVAC, cable racking, or power plant); (ii) constructing the collocation arrangement does not require a governmental license or permit; (iii) a standard space preparation fee applies; and (iv) no changes have occurred to BellSouth’s space or DeltaCom’s request between the date of the Application Response and BellSouth’s receipt of the Bona Fide Firm Order.
  - 6.4.2.1 The 30 business day interval set forth in Section 6.4.2 is the period by which BellSouth will complete construction of a cageless physical collocation arrangement, after which DeltaCom will be given access to the collocation space to begin installing its equipment.
  - 6.4.2.2 The 30 business day interval set forth in Section 6.4.2 does not include any work by BellSouth in constructing a Point of Termination (POT) bay or in installing cabling from a POT bay to the BellSouth network termination equipment, if required, which can be performed after DeltaCom has access to the collocation space.

## **2. BellSouth’s rationale**

In resolving Issue 4(a), the Arbitrators concluded that there may be circumstances when provisioning cageless physical collocation could be accomplished within thirty (30) days, while in other instances such an interval “may, in fact, be impossible.” Transcript of the Proceedings, Docket No. 99-00430, at 31 (April 4, 2000) (statement of Chairman Malone). The Arbitrators directed the parties to submit Final Best Offers on the provisioning interval for cageless physical

collocation, which recognize “that there are occasions where 30 days would be not enough time” and “that there are occasions in which [] the provisioning can occur within the 30 days as requested.” *Id.* at 32.

BellSouth believes that its Final Best Offer is consistent with the Arbitrators’ directive. As set forth in BellSouth’s proposed language, BellSouth has agreed that there are circumstances where BellSouth can and will provision cageless collocation within 30 days.<sup>2</sup> These circumstances recognize that a significant part of the provisioning interval is associated with spare preparation work, including modifications or enhancements to central office infrastructure such as HVAC, power plant, and cabling; when such work is not required, the provisioning interval can be reduced. BellSouth also is willing to commit to a shorter provisioning interval for cageless collocation, provided that there are no changes in BellSouth’s space or DeltaCom’s request between the date of the Application Response to BellSouth’s receipt of the Bona Fide Firm Order. For example, if ten days after submitting a Bona Fide Firm Order for cageless physical collocation, DeltaCom changes its order by requesting more space, BellSouth would be required to do additional work to process the request, thereby extending the provisioning interval. BellSouth’s proposal is reasonable, is consistent with the Arbitrators’ desire for “compromise,” and should be adopted.<sup>3</sup>

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<sup>2</sup> BellSouth’s collocation intervals are based on business days, since much of the work associated with provisioning collocation is performed by contractors and vendors who generally work only on regular business days. Basing an interval upon calendar days would be unrealistic because it would erroneously assume that BellSouth’s contractors and vendors work on weekends and holidays, which is generally not the case.

<sup>3</sup> The requirement that there be a standard space preparation charge in order for the 30-day interval to apply recognizes that a standard charge eliminates the need for record keeping and other administrative work associated with space preparation that could otherwise extend the collocation provisioning interval. However, this is not an issue in Tennessee. In Docket 97-01262, over BellSouth’s objection, the Authority adopted the AT&T/MCI Collocation Model,

**B. Should The Parties Continue Operating Under Existing Local Interconnection Arrangements? – Issue 5.**

In addressing Issue 5, the Arbitrators identified nineteen (19) issues relating to interconnection for which the parties were directed to submit Final Best Offers. The parties have since reached agreement on fifteen (15) of these issues. The remaining four issues in dispute are as follows: (i) the definition of local traffic; (ii) the treatment of transit traffic; (iii) reciprocal compensation for Internet Service Provider traffic; and (iv) binding forecasts.

BellSouth is submitting Final Best Offers on Issues (i) and (ii), which are set forth below. Issue (iii) does not require a Final Best Offer because the Arbitrators resolved this issue by ruling that reciprocal compensation should be paid for Internet-bound traffic on an “interim” basis until the Federal Communications Commission adopts rules establishing an inter-carrier compensation mechanism for such traffic (Issue 3(1)). Transcript of the Proceedings, Docket No. 99-00430, at 27 (April 4, 2000) (statement of Chairman Malone).<sup>4</sup>

BellSouth opposes the submission of Final Best Offers on Issue (iv) concerning binding forecasts, since the Arbitrators previously ruled that DeltaCom was not entitled to arbitrate this issue since it had not raised the issue in its Petition for Arbitration. In its Petition, DeltaCom asked the Arbitrators to resolve the question of whether the parties should “continue operating under existing local interconnection arrangements.” Arbitration Petition, Issue 5. No mention

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which derives costs based on the assumption that central offices are currently equipped for physical collocation and thus there is no need for space preparation work. If the Authority adopts collocation rates using this model, there will be no space preparation charge in Tennessee.

<sup>4</sup> On April 25, 2000, BellSouth filed a Motion for Clarification requesting, in part, that the Authority make clear that the payment of reciprocal compensation for Internet-bound traffic on an “interim” basis will involve a retroactive true-up once the FCC issues its rules. That motion remains under advisement.

was made of binding forecasts, and there is no dispute that DeltaCom's existing interconnection agreement with BellSouth says nothing about binding forecasts.

After filing its Arbitration Petition, DeltaCom unilaterally sought to raise the issue of binding forecasts by seeking to expand the scope of Issue 5. In particular, in joint issues lists filed by the parties, DeltaCom attempted to modify the language of Issue 5 by asking the Arbitrators to decide four additional questions, including whether the parties should "implement a procedure for binding forecasts." *See* Joint List of Unresolved Issues, Issue 5 (Aug. 19, 1999); Issues Matrix, Issue 5 (Aug. 31, 1999). BellSouth consistently opposed DeltaCom's attempt to expand the scope of Issue 5.

The Pre-Arbitration Officer addressed this dispute in his October 6, 1999 Report and Initial Order. Specifically, the Pre-Arbitration Officer held that DeltaCom's proposed questions, including the one concerning binding forecasts, "*were expansions rather than clarifications of these issues as originally presented in the petition, and as such, are rejected.*" Report and Initial Order of the Pre-Arbitration Officer, Docket 99-00430, at 10 (Oct. 6, 1999). The Pre-Arbitration Officer reasoned that: "Section 252(b)(4)(A) limits the Arbitrators to consider the issues as presented, allowing for clarification but not for expansion. Therefore, the issues as originally presented in the petition and restated herein are adopted for this proceeding." *Id.*

DeltaCom filed exceptions to the Pre-Arbitration Officer's Report and Initial Order, insisting that it should be entitled to arbitrate the issue of binding forecasts. In an order entered on December 3, 1999, the Arbitrators denied DeltaCom's exceptions and adopted the Report and Initial Order. As a result, the issue of binding forecasts is not properly part of this arbitration, since the Pre-Arbitration Officer and the Arbitrators denied DeltaCom's request to arbitrate this

issue. DeltaCom should not be permitted to seek arbitration of the binding forecast issue indirectly through Final Best Offers when it was not allowed to arbitrate this issue directly.<sup>5</sup>

**1. BellSouth's proposed language**

**(a) Local Traffic Definition**

Local Traffic is defined as any telephone call that originates and terminates in the same LATA and is billed by the originating Party as a local call.

**(b) Transit Traffic Service**

10.1 Transit Traffic Service is defined as the tandem switching, transport and delivery by one Party of (1) Local Traffic, IntraLATA Toll Traffic and InterLATA Toll Traffic originated from the other Party and terminating to a third party carrier, and (2) Local Traffic, IntraLATA Toll Traffic and InterLATA Toll Traffic originated from a third party carrier and terminating to the other Party. BellSouth shall provide Transit Traffic Service to DeltaCom in accordance with this Section 10. Rates for Transit Traffic Service for Local Traffic shall be the applicable call transport and termination charges for Local Traffic, as set forth in Attachment 11. Rates for Transit Traffic Service for IntraLATA Toll Traffic and InterLATA Toll Traffic (i.e., Switched Access Traffic) shall be the applicable call transport and termination charges as set forth in the providing Party's Intrastate or Interstate switched access tariff, as filed and effective with the FCC or appropriate State Commission. Billing associated with all Transit Traffic Service shall be pursuant to MECAB procedures. Wireless Type 1 traffic shall not be treated as transit traffic from a routing or billing perspective. Wireless Type 2A traffic shall not be treated as transit traffic from a routing or billing perspective until the transiting Party (BellSouth or DeltaCom, as the case may be), and the wireless carrier have the capability to meet point bill properly in accordance with MECAB guidelines. Where DeltaCom has a direct connection (via a cross connect between collocation spaces in a BellSouth central office

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<sup>5</sup> The North Carolina Utilities Commission recently rejected DeltaCom's binding forecast proposal, noting that "this provision for binding forecasts is not included in the current interconnection agreement ...." Recommended Arbitration Order, *In re: Petition by ITC^DeltaCom Communications, Inc. for Arbitration of Interconnection Agreement With BellSouth Telecommunications, Inc.*, Docket No. P-500, Sub 10. However, the North Carolina Commission encouraged BellSouth and DeltaCom "to continue to negotiate on the matter of binding forecasts," which BellSouth is willing to do. In fact, attached as Exhibit 1 is a proposal for binding forecasts that BellSouth has offered other competing local exchange carriers, which BellSouth is willing to incorporate into its interconnection agreement with DeltaCom. Without waiving its rights and without acquiescing to the arbitration of the binding forecast issue, the Arbitrators should consider Exhibit 1 as BellSouth's "Final Best Offer" to the extent the Arbitrators reverse their prior decision not to arbitrate the issue.

or otherwise) to a third party carrier, DeltaCom and that third party carrier shall not utilize Transit Traffic Service from BellSouth.

- 10.2 The delivery of traffic originated by DeltaCom which transits the BellSouth network and is transported to another carrier's network is excluded from any BellSouth billing guarantees and will be delivered at the rates as set forth in Attachment 11 to this Agreement. DeltaCom is responsible for establishing the necessary agreements or the placement of valid orders with the terminating carrier for the receipt of this traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier as a result of providing Transit Traffic Service. Further, DeltaCom agrees to compensate BellSouth for any charges or costs for the delivery of transit traffic to a third party carrier on behalf of DeltaCom for which a valid contract or order has not been established between DeltaCom and such third party carrier.
- 10.3 The Parties shall compensate each other for Transit Traffic Service as follows:
- 10.3.1 For Local Traffic originating from DeltaCom that is delivered over the Transit Traffic Service, DeltaCom will pay to BellSouth the applicable Tandem Switching and/or Interoffice Transport charges set forth in Attachment 11 to the Agreement. Charges for services provided by the Parties to a third party carrier(s) shall be assessed on a meet point basis, consistent with the terms of Section 9 hereof.
- 10.3.2 For IntraLATA and InterLATA toll traffic originating from DeltaCom that is delivered over the Transit Traffic Service, DeltaCom will pay to BellSouth the applicable call transport and termination charges as set forth in BellSouth's Intrastate or Interstate switched access tariff, as filed with the FCC or the Tennessee Regulatory Authority. Charges for services provided by the Parties to a third party carrier(s) shall be assessed on a meet point basis, consistent with the terms of Section 9 hereof.
- 10.3.3 Except as provided in Section 10.3.4 hereafter, transit charges shall be assessed upon the originating carrier, and shall not be imposed on the terminating carrier.
- 10.3.4 Transit charges associated with the provision of toll-free services (e.g. 800/888/877) shall be imposed upon the terminating carrier and shall not be assessed on the originating carrier.

## **2. BellSouth's rationale**

### **(a) Local Traffic Definition**

The language proposed by BellSouth for the definition of local traffic is straightforward and should be relatively noncontroversial. While it does not address the issue of Internet traffic



(which will be dealt with elsewhere in the parties' interconnection agreement consistent with the Arbitrators' decision in resolving Issue 3), BellSouth's proposed definition allows each party to designate its own local calling area for its originated traffic. BellSouth has eliminated the reference to BellSouth's local calling areas or BellSouth's tariffs, which makes clear that DeltaCom is free to establish its own local calling areas for its originated traffic.

**(b) Transit Traffic Service**

BellSouth's language deals with the routing and billing of transit traffic. "Transit traffic" is traffic that originates on one party's network, is switched and transported by a second party and then is sent to a third party's network. An example would be when a DeltaCom end user customer calls a customer of an independent telephone company (or even another CLEC) and the call is routed through BellSouth's network. Transit traffic may include local or switched exchange access and also can involve wireless traffic. BellSouth's language clearly and succinctly outlines the parties' obligations with respect to transit traffic.

Since the introduction of interconnection with its network, BellSouth sought to assist CLECs in their efforts to reduce their speed to market time as well as their interconnection costs by allowing CLECs to access other local exchange carriers ("LECs") via BellSouth's network. When BellSouth performs a transit network function, CLECs do not have to establish direct interconnection with the other LECs, which eases CLEC's recording and billing requirements. BellSouth's language reflects that BellSouth is willing to perform this transit network function for DeltaCom. The charges for this function depend upon the nature of the traffic. For local traffic, the Authority-approved transport and termination rates would apply. For intraLATA and interLATA traffic, the applicable tariffed rates for call transport and termination would apply.

In performing this transit network function, BellSouth provides the records needed by the CLECs to bill a third party carrier for terminating traffic from that third party carrier. In turn, BellSouth recovers its transit traffic costs from the originating LEC. LECs and BellSouth already utilize the OBF Multiple Bill, Multiple Tariff Meet Point Billing process to bill Interexchange Carriers (IXCs) for originating and terminating switched access traffic. The same billing and record exchange systems are used to bill for transit local traffic. The language BellSouth has proposed makes clear that these industry procedures will apply for transit traffic.

In many cases, when a wireless company is one of the three parties involved in originating or terminating the call, neither BellSouth, the wireless company nor the CLEC has the necessary system capabilities required to bill each other using the normal Meet Point Billing process. There are two types of wireless traffic that must be addressed – Wireless Type 1 traffic and Wireless Type 2A traffic.

Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. In other words, the wireless carrier does not have its own NXX, but uses numbers in an NXX assigned to BellSouth's land-line service. In this case, the Wireless Type 1 Traffic is indistinguishable from BellSouth-originated or BellSouth-terminated traffic from a Meet Point Billing perspective. Therefore, for routing and billing purposes, BellSouth is proposing to treat this transit traffic as BellSouth-originated or terminated traffic. In reality, there is very little of this type traffic, since most wireless carriers have distinct NXXs assigned. Further, wireless Type 1 traffic has been treated in this manner for all CLECs, including DeltaCom.

Wireless Type 2A traffic is wireless traffic that is distinguishable from BellSouth-originated or terminated traffic because the wireless carrier has distinct NXXs assigned for its use. However, the necessary system capabilities required to bill through the Meet Point billing

process are not available. Such arrangements are necessary in order for BellSouth to send the appropriate billing records to the wireless carrier and to the CLEC. Therefore, until such arrangements are available, BellSouth must continue to treat Wireless Type 2A transit traffic as BellSouth originated or terminated traffic. BellSouth's language addresses this issue as well.

C. **Should Language Covering Tax Liability Be Included In The Interconnection Agreement, And, If So, Should That Language Simply State That Each Party Is Responsible For Its Tax Liability? – Issue 8(e).**

1. **BellSouth's proposed language**

15. **Certain Federal, State and Local Taxes and Fees.**

15.1 **Definition.** For purposes of this Section 15, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on either of the Parties and measured by the charges or payments for the services furnished hereunder, excluding any taxes levied on income.

15.2 **Taxes And Fees Imposed Directly On Either Seller Or Purchaser.**

(a) Taxes and fees imposed on the providing party, which are neither permitted nor required to be passed on by the providing party to its customer, shall be borne and paid by the providing party.

(b) Taxes and fees imposed on the purchasing party, which are not required to be collected and/or remitted by the providing party, shall be borne and paid by the purchasing party.

15.3 **Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller.**

(a) Taxes and fees imposed on the purchasing party shall be borne by the purchasing party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing party.

(b) To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any

such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

(c) If the purchasing party determines that in its opinion any such taxes or fees are not lawfully due, the providing party shall not bill such taxes or fees to the purchasing party if the purchasing party provides written certification, reasonably satisfactory to the providing party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing party has determined and certified not to be lawfully due, or any such tax or fee that was not billed by the providing party, the purchasing party may contest the same in good faith, at its own expense. In the event that such contest must be pursued in the name of the providing party, the providing party shall permit the purchasing party to pursue the contest in the name of the providing party and the providing party shall have the opportunity to participate fully in the preparation of such contest. In any such contest, the purchasing party shall promptly furnish the providing party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing party and the taxing authority.

(d) In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

(e) If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

(f) Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are reasonably and necessarily incurred by the providing party in connection with any claim for or contest of any such tax or fee.

(g) Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

15.4 Taxes And Fees Imposed On Seller But Passed On To Purchaser.

(a) Taxes and fees imposed on the providing party, which are permitted or required to be passed on by the providing party to its customer, shall be borne by the purchasing party.

(b) To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing party at the time that the respective service is billed.

(c) If the purchasing party disagrees with the providing party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees; provided, however, that the parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing party shall be at the purchasing party's expense. In the event that such contest must be pursued in the name of the providing party, the providing party shall permit the purchasing party to pursue the contest in the name of the providing party and the providing party shall have the opportunity to participate fully in the preparation of such contest.

(d) If, after consultation in accordance with the preceding paragraph, the purchasing party does not agree with the providing party's final determination as to the application or basis of a particular tax or fee, and if the providing party, after receipt of a written request by the purchasing party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing party, the purchasing party may utilize the dispute resolution process outlined in Section 16 of this Agreement and Attachment 1. Utilization of the dispute resolution process shall not relieve the purchasing party from liability for any tax or fee billed by the providing party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision rendered in the contest with the imposing authority shall control as to such issues.

(e) In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee with the imposing authority, or to avoid the existence of a lien on the assets of the providing party during the pendency of such contest, the purchasing party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

(f) If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing party shall pay such additional amount, including any interest and penalties thereon.

(g) Notwithstanding any provision to the contrary, the purchasing party shall protect, indemnify and hold harmless (and defend at the purchasing party's expense) the providing party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing party in connection with any claim for or contest of any such tax or fee.

(h) Each party shall notify the other party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

15.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest. Each party agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this section.

## **2. BellSouth's rationale**

In resolving Issue 8(e), the Arbitrators directed the parties to submit Final Best Offers that "clearly and concisely sets forth the tax liabilities of the parties to the agreement." Transcript of the Proceedings, Docket No. 99-00430, at 42 (April 4, 2000) (statement of Director Malone). BellSouth's proposed language does precisely that. While BellSouth's proposed language is relatively lengthy, it clearly defines the rights and duties for each party in the handling of

complicated tax issues so that they can be resolved fairly and quickly. This language appears in many BellSouth's interconnection agreements approved by this Authority, and has been agreed to recently by a number of competing carriers in Tennessee, including AT&T. In fact, no party other than DeltaCom has ever sought to arbitrate this issue. BellSouth's proposed language is appropriate and should be adopted by the Arbitrators.

### **III. CONCLUSION**

For the foregoing reasons, the Arbitrators should adopt BellSouth's Final Best Offers on Issues 4(a), 5, and 8(e) and order that BellSouth's proposed language be incorporated into the interconnection agreement with DeltaCom.

Respectfully submitted this 5th day of May, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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## **EXHIBIT 1**

### **4.4.4 Binding Forecasts**

- 4.4.4.1 In addition to, and not in lieu of, non-binding forecasts, ITC^DeltaCom may provide to BellSouth a binding forecast of the trunks that BellSouth will need to interconnect with ITC^DeltaCom in order to terminate traffic to ITC^DeltaCom. Unless otherwise agreed, a binding forecast may not be requested for an existing trunk group that is underutilized as defined in this section or for exhausted BellSouth switch locations. ITC^DeltaCom shall provide to BellSouth sufficient justification for the quantity of trunks contained within the binding forecast. The due date contained in the binding forecast shall be no less than three months from the date of the binding forecast. Once the binding forecast is submitted to BellSouth, ITC^DeltaCom agrees to make no changes to said forecast.
- 4.4.4.2 BellSouth shall provide the total amount of requested trunks from either tandem or end offices depending on trunk and facilities availability.
- 4.4.4.3 A binding forecast shall not replace the ASR process of ordering trunks and BellSouth shall order the quantity of trunks from ITC^DeltaCom set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due date.
- 4.4.4.4 To recover the cost associated with assuring that the quantity of trunk port terminations needed to meet the binding forecast are available on the agreed upon due date, ITC^DeltaCom shall pay to BellSouth \$305.00 for the first DS1 trunk port and \$152.50 for each additional DS1 trunk port forecasted in a trunk group (i.e. between an A to Z location or BellSouth switch location to an ITC^DeltaCom switch location).
- 4.4.4.5 If, within 90 days of installation of the trunks, 85 percent of the capacity of the trunks is not being utilized, ITC^DeltaCom will pay BellSouth a percentage of the total monthly recurring trunk and facility charges from BellSouth's tariffs for the percentage of the trunks' capacity that is not being utilized.
- 4.4.4.6 If, within 180 days of installation of the trunks, the trunks are not being utilized to the capacity set forth above, the excess of the trunks may be disconnected by BellSouth.



- 4.4.4.7 Utilization on BellSouth reciprocal interconnection trunk groups associated with a binding forecast shall be measured monthly and shall be measured at the time consistent busy hour. The charges as a result of under-utilization as described in the preceding section shall apply monthly.
- 4.4.4.8 Except in the instance of underutilization by ITC^DeltaCom in section 4.4.4.5, neither Party shall charge the other for nonrecurring trunk charges and, if applicable, recurring trunk charges associated with a binding forecast.
- 4.4.4.9 Any trunks installed, as a result of the binding forecast, must remain in service for a period of at least 180 days.

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

Gary Hotvedt, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

- ☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

H. LaDon Baltimore, Esquire  
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211 Seventh Ave. N, # 320  
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- ☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Nanette S. Edwards, Esquire  
ITC^DeltaCom  
4092 South Memorial Parkway  
Huntsville, AL 35802

A handwritten signature in black ink, appearing to be "SN", is written over a horizontal line.